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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition of Ameritech Corporation	)	CC Docket No. 98-32
to Remove Barriers to Investment in	)	
Advanced Telecommunications Capability	)	

COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Ava B. Kleinman

Its Attorneys

295 North Maple Avenue
Room 3252J1
Basking Ridge, New Jersey 07920
(908) 221-8312

April 6, 1998

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SUMMARY

Ameritech's petition -- a "me too" request filed in the heels of Bell Atlantic's similar request for statutory and regulatory forbearance -- seeks a sweeping exemption from application of the core provisions of the 1996 Telecommunications Act -- Sections 271, 272, and 251(c) -- as they apply to Ameritech's provision of "advanced data services." AT&T addresses many of the arguments presented by Ameritech in its Comments on the Bell Atlantic Petition, and those Comments are incorporated herein. However, Ameritech puts its own "spin" on several issues, which are addressed here. At bottom, however, Ameritech's request -- like the request of Bell Atlantic and US West -- to provide advanced services on both an intra- and interLATA basis *before* it complies with its statutory obligations to open its local markets to real competition is the precise opposite of the carefully crafted statutory scheme established by the Congress in the Telecommunications Act of 1996. Granting Ameritech's petition would eviscerate that statutory scheme not only for advanced services, but for traditional telephony as well. Having thus far evaded many of its responsibilities under these provisions, Ameritech seeks nothing less than a sweeping exemption from these provisions going forward so that it can extend its existing monopoly over "traditional" local services into a more expansive monopoly over both traditional and advanced data services (in both intraLATA and interLATA markets).

First, Ameritech goes beyond claiming that the Commission has authority under Section 706 to forbear from enforcing Sections 271 and 251(c) (which AT&T addresses in its Comments on the Bell Atlantic Petition), arguing also that the Commission has authority to forbear from the separation requirements set forth in Section 272. AT&T explains in these Comments that this argument is without merit, because, simply put, Section 271 expressly provides that the Commission cannot grant interLATA authority to a BOC until it has demonstrated that it will comply with Section 272. And AT&T also explains that, in light of the convergence of traditional and advanced services, Ameritech's suggestion that its

integrated "data affiliate" should not be deemed an incumbent LEC under Section 251(h) cannot be sustained.

Ameritech's policy arguments are also fundamentally incorrect. Because Ameritech still has monopoly control over the local facilities that are necessary to provide both "traditional" and "advanced" services, CLECs must have access to the BOCs' networks before the BOCs can be granted authority to provide in-region interLATA services. Indeed, because Ameritech could provide *any* telecommunications service through its "advanced data affiliate," granting its Petition could be tantamount to a full permanent grant of Section 271 authority, without requiring Ameritech to make any of the statutory showings necessary to gain such relief. At bottom, Ameritech's claims are a direct attack on the Act itself, and the pro-competitive principles that underlie Sections 271, 272, and 251(c).

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COMMENTS OF AT&T CORP.

Pursuant to the Public Notices released on March 6 and March 16, 1998, AT&T Corp. ("AT&T") respectfully submits these Comments in opposition to Ameritech's petition for relief from certain regulatory restrictions relating to the provision of high-speed broadband services on an intraLATA and interLATA basis.

Ameritech's petition is the third in a series of petitions filed by the RBOCs seeking "forbearance" from the major provisions of the Telecommunications Act of 1996 ("the 1996 Act") as they apply to advanced data services. Ameritech's Petition is substantially similar to Bell Atlantic's recent "Petition for Relief from Barriers to Deployment of Advanced Telecommunications Services," filed January 26, 1998 ("Bell Atlantic Pet."), and relies on many of the same meritless legal and factual arguments made by Bell Atlantic. Because Ameritech's petition suffers from many of the same shortcomings as Bell Atlantic's, AT&T

incorporates herein its Comments opposing the Bell Atlantic petition,[1] and will not repeat those arguments here.

In the remainder of this pleading, AT&T will limit itself to addressing claims that are specific to Ameritech's Petition. In Section I, AT&T refutes Ameritech's argument that the Commission has authority under Section 706 to forbear from enforcing the separation requirements of Section 272, as well as Ameritech's claim that the Commission should declare Ameritech's "data affiliate" not to be an incumbent LEC for purposes of Section 251(h). In Section II, AT&T demonstrates that the Ameritech's request is backwards, in that it asks to be relieved of its interconnection and resale obligations for advanced services *before* it has met its obligations to open its local market to competition. Moreover, it bases this improper request on false premises. In particular, Ameritech is wrong that LATAs have no meaning in a world of packet-switched communications, because Ameritech continues to have monopoly control over the local facilities necessary to deliver broadband services to consumers. Ameritech is also mistaken in claiming that sweeping relief is necessary to provide incentives for Ameritech to upgrade its local network.

At bottom, Ameritech's claims are a direct attack on the 1996 Act itself, in particular the carefully crafted structure of Sections 271, 272, and 251(c) which establish the framework for the ILECs to open their local monopolies to competition as a prerequisite to obtaining

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[1] Comments of AT&T Corp., Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26, filed April 6, 1998, appended hereto as Attachment A ("AT&T Bell Atl. Comments").

in-region interLATA relief. Having thus far evaded many of its responsibilities under these provisions, Ameritech seeks nothing less than a sweeping exemption from these provisions going forward so that it can extend its existing monopoly over "traditional" local service into a more expansive monopoly over both traditional and advanced data services (both intraLATA and interLATA). Even if the Commission had the power to grant such relief (which it does not), Ameritech's request would completely eviscerate the mandates of the 1996 Act.

I. THE FCC HAS NO LEGAL AUTHORITY TO GRANT THE RELIEF AMERITECH SEEKS.

Ameritech asks the Commission to "forbear" from enforcing three cornerstones of the 1996 Act -- Section 271, Section 272, and Section 251(c) -- insofar as they apply to Ameritech's provision of "advanced data services."[2] Ameritech argues, as does Bell Atlantic, that Section 706 of the Act gives the Commission sweeping authority to forbear from enforcing *any* part of the Act to the extent that it may relate to the provision of advanced telecommunications services. Pet. at 2-3, 14, 33-35. As AT&T shows in its *Bell Atl. Comments* (at 4-12), Ameritech's claim is squarely foreclosed by the plain terms of the Act. In particular, AT&T there refutes Ameritech's claims with respect to forbearance from Sections 271 and 251(c), as well as Ameritech's claim concerning the Commission's authority to create a "global LATA" -- a tortured euphemism for eliminating LATA boundaries entirely -- under Section 3(25) of the Act.

2 *See* Pet. at 3 n.3 (providing Ameritech's definition of "advanced data services").

Ameritech's specific claim (at 14-22) that Section 706 gives the Commission authority to forbear from Section 272 is equally meritless. The reference in Section 706 to "regulatory forbearance" is an express reference to the limited forbearance powers granted to the Commission in Section 10. *See AT&T Bell Atl. Comments* at 5-7. Section 10(d) explicitly provides that the FCC cannot forbear from 271 until that section is "fully implemented." Section 271, in turn, expressly provides that the Commission cannot grant interLATA authority to a BOC until it has demonstrated that it will comply with Section 272. *See* § 271(d)(3). Therefore, Section 10's prohibition on forbearance from Section 271 necessarily includes a prohibition on forbearance from Section 271's specific requirement that the BOC offer any services covered by Section 271 only in compliance with Section 272.

The Commission recently considered and rejected an argument similar to Ameritech's. *See BellSouth Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as Amended, to Previously Authorized Services*, CC Docket No. 96-149, Memorandum Opinion and Order, ¶¶ 22-23 (rel. February 6, 1998). In response to a petition for forbearance from Section 272 filed by BellSouth, the Commission expressly concluded that "prior to their full implementation we lack authority to forbear [under Section 10] from application of the requirements of section 272 to any service for which the BOC must obtain prior authorization under section 271(d)(3)." *Id.* at ¶ 22.[3] The Commission noted that Section 271(d)(3)(B) requires compliance with Section 272 as a prerequisite to

[3] The Commission partially granted BellSouth's petition, but only on the grounds that the services at issue were previously authorized and therefore Commission approval under Section 271 was not required.

interLATA authority, and therefore "section 10(d), read in conjunction with section 271(d)(3)(B), precludes our forbearance . . . from section 272 requirements with regard to any service for which a BOC must obtain prior authorization under section 271(d)(3)." *Id.* at ¶ 23.

In all events, forbearing from the strict separation requirements of Section 272 would be contrary to the public interest. Indeed, Ameritech is quite candid that it seeks the removal of Section 272's requirements because of its intention to establish extensive integration between the personnel, network design, installation, operations, maintenance services, and administrative services of the "data affiliate" and the BOC. *See* Pet. at 15-16. Ameritech also seeks (at 18-21) complete integration of the BOC's and the affiliate's books of account, while simultaneously giving the "data affiliate" complete pricing freedom as a non-incumbent, nondominant carrier. Such integration would give Ameritech unchecked power to leverage its monopoly control of the local market into the interLATA market. The data affiliate would have unique access to the BOC's network and operations, coupled with the ability to recover its costs from monopoly local ratepayers while pricing its advanced data services at incremental cost. Under those circumstances, no competitor could possibly match the data affiliate's offerings. *See AT&T Bell Atl. Comments* at 19-21.

Thus, Ameritech's request would completely undermine Congress's carefully crafted scheme for promoting and protecting competition. Indeed, Congress designed the separation requirements in Section 272 to apply to the BOCs' provision of interLATA services during a period of time in which the BOC is in full compliance with the competitive checklist and has fully opened its markets to local competition. To suggest, as does Ameritech, that the

Commission should completely forbear from all such separation requirements *prior* to any demonstration that the local exchange is open to competition is frivolous.[4]

Also meritless is Ameritech's argument (at 24-25) that the Commission should not classify its data affiliate as an "incumbent LEC" under Section 251(h). Although the Commission indicated in the *Non-Accounting Safeguards Order* that BOC interLATA affiliates that offer local service would not necessarily be deemed "incumbent" LECs for purposes of Section 251(h), that tentative finding was subject to several qualifications. Most notably, the Commission was assuming, as Ameritech does not, that the interLATA affiliate would be operating in compliance with the full panoply of Section 272 separation

[4] For similar reasons, the less stringent separation rules that apply to independent LECs would also be inappropriate. *See* Pet. at 18-19; *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities and Authorizations Therefor*, CC Docket No. 79-252, Fifth Report and Order, 98 FCC 2d 1191 (1984); *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; Policy and Rules Concerning the Interstate Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, (released April 18, 1997). The Commission has previously found that BOCs offering interLATA services would have the incentive and the ability to engage in a wide variety of anticompetitive practices. *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, ¶¶ 10-13 (1996) ("*Non-Accounting Safeguards Order*"). To combat the BOCs' ability to engage in such practices, the Commission has adopted an extensive set of rules and safeguards to implement Sections 272 of the Act. *See id.*; *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, First Report and Order (1996). Ameritech has made no showing that would require the Commission either to revisit its previous findings or to decline to apply those rules to the BOCs' provision of interLATA broadband services (which, as explained later, will inevitably include voice services).

requirements. *See Non-Accounting Safeguards Order*, ¶¶ 312, 316. Ameritech's proposed data "affiliate," by contrast, would be so thoroughly integrated with the BOC that it could hardly be considered a separate entity at all. *Cf. Non-Accounting Safeguards Order*, ¶ 309 (transfer of facilities to affiliate would result in classification of affiliate as successor or assign of the BOC). Ameritech's suggestion should therefore be rejected out of hand.[5]

II. THE REQUESTED RELIEF WILL STIFLE, RATHER THAN PROMOTE, INVESTMENT IN COMPETITIVE SERVICES.

Not only does Ameritech's Petition lack any legal merit, its proposals would be at odds with the statute and with any reasonable public interest standard even if the Commission had authority to adopt them (which it does not). What is clear from over two years of experience since the 1996 Act was passed is that it is extremely difficult for CLECs to break the stranglehold of the ILECs over their monopoly local facilities, and that for the foreseeable future the only path to virtually every residence and business customer will continue to be the ILECs' local networks. Thus for CLECs to compete, they must gain access to the unbundled network elements and obtain interconnection at reasonable prices and under reasonable terms. This is true not only for the provision of POTS service, but for advanced services as well,

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[5] Moreover, the Commission expressly left for another day the question whether the BOC's Section 272 affiliate could be found to have substantially replaced the incumbent LEC and thus would qualify as an "incumbent" under Section 251(h)(2). Although this would be a fact-specific inquiry, Ameritech's apparent desire to offer a complete bundle of services through its data affiliate on an integrated basis, including local service and second lines, makes it likely that the "affiliate" would in fact become the primary local exchange carrier in Ameritech's service areas.

which use the same ILEC local loop and ILEC local switch (when used to route voice calls to the PSN) as for traditional services, as well as the critical electronics. *See AT&T Bell Atl. Comments* at 10-11. It is for this reason that Section 251 mandates that the ILECs make their local networks available to competitors in a meaningful way *before* they are permitted to provide in-region long distance services.

The extensive relief that Ameritech seeks, although purportedly limited to "advanced data services," would, if granted, enable Ameritech to offer the full range of services over the high-speed access facilities that are the subject of its Petition -- Internet access, fax, data, and *voice*. This is because once a customer obtains such a high-capacity line, that customer would have no need to retain or purchase a separate POTS line for his/her traditional telephony services. And because Ameritech is seeking, as part of its request, interLATA relief as well, Ameritech's Petition could effectively be tantamount to a *full, permanent grant of Section 271 authority* by enabling it to provide traditional *long distance* services along with the "Internet" services that are the purported subject of its request-- without requiring Ameritech to establish any of the statutory prerequisites to gaining such relief. In that respect, Ameritech's Petition is a Trojan horse that would allow it to completely eviscerate the Congressional scheme for promoting competition: At the end of the day, Ameritech would have authority to offer a full package of all packet-switched services (including interLATA voice services) through an unregulated, integrated affiliate that would be free of any duty to provide unbundled access to competitors as envisioned in Section 251(c). If Ameritech were in fact granted such extraordinary authority, it would no longer have any incentive to fulfill the competitive checklist to facilitate local entry, and it would have the unfettered ability to offer services that no competitor could hope to match.

Indeed, contrary to the most basic policies of the 1996 Act, Ameritech seeks a risk-free environment in which it can both solidify its monopoly position in the local market by upgrading its network to provide broadband services and simultaneously leverage that monopoly power into the interLATA market for packet-switched communications and Internet backbone capacity. To achieve these twin goals, Ameritech asks the Commission to "forbear" from applying three central provisions of the Act: Sections 271, 272, and 251(c). Ameritech's Petition is blatantly anti-competitive and rests on a number of faulty assumptions.

To begin with, the basic factual premise of Ameritech's petition -- that LATAs are "meaningless" in a world of packet-switched broadband data services (*see* Pet. at 11-14) -- is simply false. Even advanced data services are provided over the same monopoly LEC loops that circuit-switched voice services are. Therefore, the LATA serves exactly the same purpose in the broadband context as it serves in the circuit-switched context: it identifies and walls off an area of monopoly control and prevents the BOCs from extending that monopoly control into other markets.

Ameritech's attempts to obscure this reality are unavailing. In particular, Ameritech's repeated references to the fact that packet-switched communications are "dynamically routed" and "connectionless" are irrelevant. Regardless of the differences between the way circuit-switched and packet-switched communications are routed, the essential point is that the vast majority of such communications are eventually routed over the same LEC local bottleneck facilities that are used for traditional telephony. For this reason, the BOCs have the same ability to leverage their local monopoly power into the market for interLATA advanced data services as they do in the context of interexchange services, and the policies that underlie Section 271 are therefore equally applicable in the broadband context.

Moreover, Ameritech's track record in making unbundled network elements available to CLECs for the provision of traditional services is so poor that it is inconceivable that CLECs would ever be able to obtain the network elements and interconnection opportunities from Ameritech that are necessary to provide competitive broadband services if Ameritech's request were approved. For example, Ameritech has yet to implement a workable, nondiscriminatory operations support system,[6] and it forces its competitors, if they are to recombine elements, into inefficient collocation arrangements in its central offices. *Cf. AT&T Bell Atl. Comments* at 17-19. In addition, Ameritech has rendered UNE-based competition for traditional services impossible because of its refusal to provide shared transport as an unbundled network element, despite the fact that the Commission has expressly ordered it to do so in an unstayed order.[7] Indeed, the Michigan Public Service Commission ("MPSC") has independently ordered Ameritech to provide shared transport pursuant to state law, and furthermore it correctly told a Michigan court recently that "Ameritech refuses to follow the

6 *See In the Matter of Application of Ameritech Michigan pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-295 (rel. Aug. 9, 1997), ¶ 158.

7 *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, Third Order on Reconsideration, FCC No. 97-295 (rel. Aug. 18, 1997), *pets. for review pending sub nom. Southwestern Bell Tel. Co. v. FCC*, Nos. 97-3389 et al. (8th Cir.).

presumptively valid orders of the [MPSC] and to date 'common transport' is not available to all competing carriers."[8]

A CLEC purchasing UNE combinations must be able to obtain both the loop and the associated modem as unbundled elements in order provide xDSL services. Ameritech's Petition is an indication that it will oppose any request to provide those modems on an unbundled basis. *See* Pet. at 22-23. If such modems remain unavailable as UNEs, AT&T would be forced to collocate in Ameritech central offices and to install its own modems to connect to Ameritech's loops. Yet Ameritech's Petition (at 22-24) calls into question whether competitors will be able to obtain unbundled access to loops conditioned to provide xDSL services. For these reasons as well, the ability of CLECs to offer competing xDSL services remains in substantial doubt.

Furthermore, contrary to Ameritech's vague assertions, Ameritech faces no meaningful competition today from other service providers. Ameritech states that "[c]able television plant" is "supporting the needs of some American consumers for broadband access" (Pet. at 28). Cable companies, however, have won only about 100,000 cable modem customers nationwide and face significant obstacles to increasing that number in the near future. *See AT&T Bell Atl. Comments* at p. 31, fn. 70; *see also Bell Atlantic Pet.*, Attachment 2, p. 49. Similarly, Ameritech claims that satellite-based and wireless alternatives are being "touted," "advertised," and "announced" across the country (at 28), but despite the "hype,"

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[8] *Ameritech Michigan v. Michigan Pub. Serv. Comm'n*, No. 209828 (Mich. Ct. of App.), Brief of MPSC in Opposition to Ameritech's Motion for Stay, p. 7 (filed March 9, 1998).

these systems have captured only a tiny fraction of the market, and the major satellite-based networks Ameritech mentions (at 28 n.48) are years away from operation. By contrast, Ameritech can easily upgrade its existing network on a customer-by-customer basis to provide broadband services simply by inserting electronics and modem cards into its switches or as adjuncts to its switches (and, where necessary, conditioning loops), and can do so at low incremental costs. *See AT&T Bell Atl. Comments* at 19-21. As these facts demonstrate, Ameritech's claim (at 24) that a "new entrant is no less able to construct new broadband facilities than is an incumbent LEC" is pure fantasy. For the foreseeable future, advanced data service providers will continue to depend on obtaining access to the LECs' networks in order to provide service, and for this reason their networks must be unbundled and available at reasonable terms to competitors, as the 1996 Act requires.

In contrast to these manifest harms to competition, granting Ameritech's Petition would not bring about either of the two principal benefits that Ameritech claims. First, granting Ameritech relief from the unbundling requirements and the TELRIC pricing standard is not necessary to encourage Ameritech to invest in upgrading its local network. *See* Pet. at 10-11, 22-23. As the Commission has previously found, the TELRIC standard fully compensates Ameritech for all of its legitimate costs. TELRIC-based rates represent the true economic cost of Ameritech's unbundled network elements, and are equal to the amount an efficient supplier of those elements could charge in a competitive market. *Local Competition Order*, ¶ 679. Moreover, Ameritech's argument as it relates to its *future* investment in packet-switched technologies is especially baseless, because as long as Ameritech deploys such technologies efficiently, the forward-looking, TELRIC-based costs of such facilities should be roughly equal to its actual expenditures. *Cf.* Pet. at 22-23.

TELRIC methodologies also fully compensate the LECs for all of their legitimate business risks, because they incorporate a risk-adjusted rate of return and depreciation rates that reflect the risks of technological advancement. *Local Competition Order*, ¶¶ 686-87, 700. In reality, Ameritech's Petition seeks protection far beyond mere compensation for these legitimate business risks -- it seeks the elimination of *all* risk, through protection from competition itself. But such protection runs counter to the fundamental policy of the 1996 Act.

Indeed, Ameritech clearly has the means to upgrade its local network for the provision of broadband services now if it desires to do so. Ameritech has experienced double digit earnings growth for five consecutive years; its return on average equity has been at least *28 percent* each of the last three years, and its return on capital has been at least 17 percent the last three years.[9] Without doubt, Ameritech is flush with money for investment. In effect, Ameritech doesn't need regulatory relief to deploy these local services. Rather, granting it the requested relief would have the practical (and, from Ameritech's point of view, desired) effect of foreclosing CLEC competition. Being relieved of this immediate threat, Ameritech would have the flexibility to time the deployment of these services and target such deployment only where it perceives actual competitive inroads,[10] and to do so with less desirable services at above-market prices.

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[9] Ameritech 1997 Annual Report, pp. 2, 22.

[10] *See* "Telco & Cable Internet Strategies: The Dawn of Carrier-class Access," 1997 Jupiter Strategic Planning Services/IT47 ("Jupiter Study") at 31 ("Currently, the RBOCs have a stranglehold on high-speed Internet access via leased lines by virtue of

(footnote continued on following page)

Second, Ameritech is also wrong in claiming (at 9-10) that granting its Petition is necessary to relieve congestion on the Internet backbone. Congestion on the backbone's transport and routing facilities is only a minor source of Internet congestion, and in all events the current backbone providers are already spending huge sums of money to increase capacity. *AT&T Bell Atl. Comments* at 23-24. Any congestion on the Internet backbone facilities pales in comparison to the deficiencies in the local network resulting from the ILECs' failure to upgrade their local facilities to accommodate broadband services.[11] To be sure, the breakdown of peering arrangements is a serious issue, and backbone providers like Worldcom have sufficient market power to harm the ability of smaller ISPs to offer competitive Internet access services. The solution to that problem, however, is to adopt appropriate conditions on Worldcom's proposed merger with MCI; it is not to permit the entry of an RBOC while it still retains its bottleneck monopoly in local services. Ameritech's entry into the market for

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(footnote continued from previous page)

their ownership of the local loop. The RBOCs will have little reason to invest in ADSL for business use until businesses have options for high-speed access besides leasing T1 and ISDN lines. . . . Moreover, high demand for second phone lines in the residential market - fueled in part by Internet access - provides a strong disincentive for RBOCs to offer ADSL to consumers, because ADSL offers simultaneous voice and data traffic").

[11] See the Comments of numerous ILECs filed in In the Matter of Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-263. The longstanding "temporary" exemption from payment of access charges accorded to enhanced service providers has certainly sent the wrong economic signals to both ISPs and ILECs, the latter of which are understandably reluctant to upgrade their networks so long as ISPs can continue to utilize the circuit-switched local network at discounted, non-usage sensitive prices.

interLATA "data services" would inevitably impede competition, as Ameritech would have the ability to leverage its monopoly power in local services into the interLATA market and create offerings that no competitor could possibly match. *See AT&T Bell Atl. Comments* at 30-31.

CONCLUSION

For the foregoing reasons, Ameritech's Petition to Remove Barriers to Investment in Advanced Telecommunications Capability should be denied.

Respectfully submitted,

AT&T CORP.

By Ava B. Kleinman

Mark C. Rosenblum
Ava B. Kleinman

Its Attorneys

295 North Maple Avenue
Room 3252J1
Basking Ridge, New Jersey 07920
(908) 221-8312

April 6, 1998

ATTACHMENT A

AT&T'S COMMENTS ON BELL ATLANTIC PETITION

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Mark C. Rosenblum
Ava B. Kleinman
Dina Mack

Its Attorneys

295 North Maple Avenue
Room 3252J1
Basking Ridge, New Jersey 07920
(908) 221-8312

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SUMMARY

Bell Atlantic's petition for far-ranging regulatory forbearance to provide high-speed broadband services is merely the latest iteration of the RBOCs' drive to be freed from monopoly safeguards before they open their local markets to meaningful competition. In the instant petition, Bell Atlantic dresses up its request with the promise of better Internet access for consumers. First, there is no basis for Bell Atlantic's claim that it requires broad exemption from current laws to offer such new service to customers. Moreover, if unleashed to provide high-capacity "Internet" services outside of the statutory requirements to make these advanced services (and the network elements underlying them) available for purchase by competitors, Bell Atlantic would simply extend its existing monopoly in the local exchange into a more expansive monopoly including all types of calls, including "Internet" as well as traditional voice, fax, data and multimedia.

This is because the high-speed access connection to the home or business that is the subject of the instant petition is entirely capable of carrying all of a customer's traffic, including voice. Once a home or business purchases such access connections, there is no need for it to maintain a separate POTS line for its voice/fax/data calls. To the contrary, the higher bandwidth services already provided by Bell Atlantic in the form of ISDN, and planned by Bell Atlantic in the form of DSL, utilize the customer's existing twisted copper pair loops, and accomplish the greater speeds and capacity through conditioning the loops and then equipping them on either end with sophisticated electronics. There is thus no need for the customer to retain (or purchase) standard phone lines, because all of his/her traffic can be accommodated over the bigger "pipe.

Notwithstanding the existing statutory requirement that RBOCs unbundle their networks and provide the network elements and interconnection to CLECs at cost-based prices, Bell Atlantic has steadfastly refused to comply with these mandates. As a result, CLECs are unable to purchase UNEs, as is their right, or obtain affordable collocation, as is also their right. In the face of this anti-competitive environment (of its own creation), Bell Atlantic now asks the Commission to let it offer "advanced telecommunications services," free of the very unbundling, pricing and resale obligations that it has successfully sidestepped for traditional services up till now. However, if permitted to escape its statutory obligations, Bell Atlantic would control the pace, location and pricing of upgrades to its network, timing its deployment of advanced services to the competitive threats that it faces. And it would do so free of any real competitive pressures from the CLECs, because if it gets its way it would be relieved from any requirement to make the broadband service available to CLECs as UNEs or under resale. And by further acceding to Bell Atlantic's request to be permitted to offer these services on an interLATA basis, the Commission would be opening the door (or, more literally, the "pipe") for Bell Atlantic to leverage its monopoly position in the local exchange to <u>all</u> long distance services as well.

The Comments below demonstrate that, as a threshold matter, Bell Atlantic's request exceeds the Commission's authority to grant. Bell Atlantic relies on the general language of Section 706 of the Act, which directs the Commission to encourage the deployment of advanced telecommunications services. However, that section is not an independent grant of authority, and its reference to "regulatory forbearance" -- the linchpin of Bell Atlantic's statutory claim -- derives its meaning directly from Section 10 of the Telecom Act. Section 10 prohibits the Commission from granting forbearance from the very resale, unbundling and pricing requirements and interLATA restrictions that Bell Atlantic seeks relief from here. Simply put, Bell Atlantic seeks regulatory relief that the Commission does not have the power to grant.

Further, in these Comments AT&T shows that Bell Atlantic's network is "the only game in town" for the foreseeable future, and that CLECs must have full and fair access to its facilities if broad competition is to emerge -- whether for POTS or for advanced services. Thus Bell Atlantic's request is backwards, in that it asks to be relieved of its interconnection and resale obligations for broadband services <u>before</u> having opened its market for many of the same unbundled network elements when they are used to provide traditional telephony services. Bell Atlantic's longstanding recalcitrance in providing AT&T (and other CLECs) with unbundled network elements, collocation and workable operational support systems for its traditional loops and switching functions will only be more egregious if they are not required to sell their advanced services to CLECs as UNEs or under resale.

There is no legal basis, and just as plainly no policy basis, to allow Bell Atlantic to fence off selected UNEs and services so that it -- and it alone -- can provide advanced services to customers, and seamlessly provide traditional voice and fax services as well. Such wholesale abandonment of the goals of the Telecom Act is entirely unwarranted. The Commission need not focus on ways to relieve Bell Atlantic of its statutory obligations, but rather should concentrate on forcing Bell Atlantic to comply with its duties, and make available to CLECs the building blocks of their networks.

The second prong of Bell Atlantic's request is that it be allowed to provide these advanced services on an interLATA basis because the Internet backbone is congested. As discussed in these Comments, the biggest choke point in the provision of Internet services is the local loop, the technology of which has not kept pace with market demands for high-speed